

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MATTHEW JOHNSTONE,

Plaintiff,

No. C 09-4872 PJH

v.

**ORDER REQUIRING FURTHER
BRIEFING**

CITY OF SAN CARLOS, et al.,

Defendants.

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Defendants' motion for summary judgment came on for hearing on April 6, 2011 before this court. Having read the papers submitted and heard and considered the oral arguments made by the parties at the hearing, the court has determined that additional briefing is necessary in order to enable the court to issue a final ruling on defendants' motion, as follows:

Plaintiff's amended complaint asserts two causes of action, one for violation of civil rights pursuant to 42 U.S.C. § 1983 against defendant McCourtie, and another for violation of civil rights pursuant to 42 U.S.C. § 1983 against the City of San Carlos. See Amended Complaint, ¶¶ 33-52. Defendants seek summary judgment, in part, with respect to plaintiff's claim against McCourtie and more particularly, plaintiff's claim that McCourtie's actions in executing search and/or arrest warrants for plaintiff, violated certain Fourth, Fifth, and Fourteenth Amendment rights. To that end, the parties have disputed whether probable cause in fact supported the search and/or arrest warrants at issue, with plaintiff challenging both the existence of probable cause as well as the veracity of McCourtie's representations in affidavits and testimony supporting the probable cause determinations.

As was made obvious at the hearing on defendants' motion, however, there is a lack

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1 of clarity with respect to the specific probable cause determinations being challenged by
2 plaintiff. Defendants, for example, have identified four separate probable cause
3 determinations in this action: (1) a probable cause determination made on August 22, 2007,
4 in support of a search warrant for plaintiff's residence; (2) a probable cause determination
5 made on October 2, 2007, in support of an arrest warrant for plaintiff; (3) a probable cause
6 determination made in connection with a February 28, 2008 preliminary hearing; and (4) a
7 probable cause determination made on March 6, 2008, in support of a second search
8 warrant for plaintiff's phone records. Yet neither party has clearly identified for the court
9 which – or all – of these determinations is being challenged by plaintiff; the particular
10 evidence relied upon by plaintiff to support a lack of probable cause for each challenged
11 determination; and/or the allegedly material misrepresentations/omissions that correspond
12 specifically to each challenged probable cause determination.

13 As the court finds this information to be necessary in resolving the dispute between
14 the parties, the court hereby instructs both parties to file an additional written brief clearly
15 identifying the foregoing information. Plaintiff's brief shall be due no later than Tuesday,
16 April 12, 2011. Defendants' response thereto shall be due no later than Friday, April 15,
17 2011. Neither party's brief shall exceed five pages.
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19 **IT IS SO ORDERED.**

20 Dated: April 6, 2011



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PHYLLIS J. HAMILTON
22 United States District Judge
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